

Federal Property Management Regulations

§ 101-40.408-3

experienced the problems leading to the imposition of temporary nonuse on which may be reasonably expected to experience similar problems. Temporary nonuse shall not be extended to unaffected facilities solely for punitive reasons or to damage the carrier's operations.

[51 FR 24339, July 3, 1986]

§ 101-40.408-2 Causes for temporary nonuse.

A carrier may be placed in temporary nonuse for the causes listed in paragraphs (a) through (n) of this section.

(a) Willful violations of the terms of the tariffs, tenders of service, commercial or Government bills of lading, or similar arrangements determining the relationship of the parties;

(b) Persistent and/or willful failure to meet requested packing/pickup service requirements;

(c) Deliveries exceeding time-in-transit standards when established by the Government; e.g., the GSA household goods tender of service and transit times established for shipments from agencies or the GSA Federal Supply Service distribution centers;

(d) Failure to meet required delivery dates on commercial or Government bills of lading;

(e) Failure to furnish and use clean and safe vehicles and freight handling equipment;

(f) Violation of Department of Transportation (DOT) hazardous materials regulations;

(g) Mishandling of freight; e.g., damaged or missing transportation seals, or improper loading, blocking, packing, or bracing of property;

(h) Excessive damage or loss to material transported;

(i) Improper routing;

(j) Failure to pay just debts so as to subject Government shipments to possible frustration, unlawful seizure, or detention;

(k) Failure to maintain insurance coverage;

(l) Operating without legal authority;

(m) Failure to settle claims in accordance with applicable Government regulations; and

(n) Repeated failure to comply with the regulations of the DOT, the Interstate Commerce Commission (ICC), or

State or local governments; or failure to comply with other applicable Government regulations.

[51 FR 24339, July 3, 1986]

§ 101-40.408-3 Procedures.

(a) *Investigation and referral.* Agencies shall prescribe procedures for placing a carrier in temporary nonuse. Further, the procedures shall provide that a carrier which fails, within the period of temporary nonuse, to correct the cause(s) for which temporary nonuse was imposed shall be referred to the agency's debarring official for appropriate action.

(b) *Notice of proposal to place a carrier in temporary nonuse.* The carrier shall be notified by certified mail with return receipt requested of the following information:

(1) The effective dates of the proposed temporary nonuse;

(2) The extent or scope of the proposed temporary nonuse including the specific transportation facilities to which the period of exclusion will be applicable;

(3) The facts relied on to support the specified cause(s) for temporary nonuse;

(4) A period of 7 calendar days from the date the transportation officer's notice is received during which the carrier may submit in person, in writing, or through a representative, rebuttal information and arguments opposing the temporary nonuse;

(5) A period of 5 workdays during which the transportation officer will evaluate the carrier's rebuttal information and opposing arguments and render a decision;

(6) The availability of an appeal of the transportation officer's decision to a reviewing official, provided the request for review is received within 5 work days of receipt of the transportation officer's decision;

(7) The corrective action required by the carrier to be removed from temporary nonuse; and

(8) An additional nonuse period of 30 calendar days during which the carrier that fails to correct the cause(s) for temporary nonuse will be referred to the agency's debarring official for appropriate action.

(c) *Decision-making process.* (1) Agencies shall prescribe procedures governing the temporary nonuse decision-making process, which shall be as informal as practicable, consistent with principles of fundamental fairness. The procedures shall afford the carrier an opportunity to submit in person, in writing, or through a representative, information and argument in opposition to a temporary nonuse status.

(2) If the carrier requests a review of the transportation officer's decision, the transportation officer shall afford the carrier an opportunity to make a presentation, orally or in writing, or through a representative, to a designated agency reviewing official. This presentation shall be held within 5 workdays of the transportation officer's receipt of the carrier's request for a review of his/her decision. The reviewing official shall:

(i) Consider the carrier's submission, investigate the contentions made, and make written findings of fact concerning the matters in dispute;

(ii) Assess mitigating factors and corrective measures proposed by the carrier;

(iii) Determine whether the facts, as found during his/her review, support a cause for imposition of the period of temporary nonuse proposed by the transportation officer; and

(iv) Inform the carrier of the result of his/her review within 5 workdays of receiving the carrier's submission or presentation.

(3) The effective date of the period of temporary nonuse may be delayed if there is a review by a designated agency reviewing official. Should a period of temporary nonuse be imposed following such a review, the period of temporary nonuse shall be adjusted to reflect the period proposed by the transportation officer unless a different period is recommended by the reviewing official.

(d) *Decision to impose temporary nonuse.* In actions in which a carrier does not request a review of the transportation officer's decision, the transportation officer shall make a decision on the basis of all the information contained in the administrative record, including any submission by the carrier. The Transportation officer shall inform

the carrier of his/her decision within 5 workdays of the closing of the period for evaluating the carrier's information and arguments or his/her receipt of the reviewing officer's report. This decision shall be communicated in writing, by return receipt mail, and shall include notice of:

(1) The extent or scope of the period of nonuse including the specific transportation facilities affected by the period of temporary nonuse;

(2) The effective dates of the period of temporary nonuse;

(3) The corrective action, if any, necessary to be removed from temporary nonuse status;

(4) An additional period of 30 calendar days for debarment referral if the conduct leading to the imposition of the period of temporary nonuse continues; and

(5) Procedures for the carrier to obtain a review of the transportation officer's decision by a designated reviewing official.

[51 FR 24339, July 3, 1986; 51 FR 27539, Aug. 2, 1986]

§ 101-40.408-4 Period of temporary nonuse.

Temporary nonuse shall be for a period commensurate with the seriousness of the cause(s) for temporary nonuse, but not for more than 90 consecutive days, except that the period of temporary nonuse may be extended an additional 30 calendar days for debarment referral when the carrier fails to correct the cause(s) for which temporary nonuse was imposed. The transportation officer, for good cause, may impose temporary nonuse beginning the same day that the notice of proposed temporary nonuse is given when continued use of the carrier's services would place the Government at risk. The transportation officer may consider terminating the temporary nonuse or reducing the period of temporary nonuse, upon the carrier's application, supported by documentation, for reasons deemed appropriate by the transportation officer, such as:

(a) Newly discovered material evidence;

(b) Bona fide change in the carrier's ownership or management; or